

February 12, 2002



Magalie Roman-Salas
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Docket No. 98- 206
Notice of *Ex Parte* Presentation

Dear Ms. Roman-Salas:

Pursuant to Section 1.1206(b) of the Commission's rules, this letter provides notice of my February 12, 2002 written *ex parte* presentation (*via* email) to the Chairman.

A copy of the presentation, which related to the above docket, is attached.

Respectfully submitted,

Andrew Jay Schwartzman

cc. Chairman Powell

2/11/02

Dear Mr. Chairman:

I enjoyed your give and take with Scott Cleland the other day. As I told Toni M. and Susan E. later that day, I am amazed at the breadth of your knowledge.

I am writing to call attention to what seem to me to be two rather striking inconsistencies. First, while I welcome your emphatic warning that the Commission will not allow incumbents to its processes as a tool to stifle innovative competitors, I cannot reconcile your statement with reports that you are inclined to require Northpoint to enter an auction to obtain spectrum to enter the market with a competitive MVPD/wireless broadband technology. This is precisely the kind of "disruptive" innovation about which you were speaking. The Commission has ample authority to grant Northpoint's application; in the context in which the issue arises, it is easy for you to conclude that an auction will favor incumbents and kill off a new technology.

Second, while I agree that you SHOULD be "ashamed" to say that the world does not know" how high speed access should be classified, you implicitly criticized your predecessors for the delay. That isn't fair, at least insofar as you have been an enabler. On at least two occasions, I urged you not to support issuance of an NOI and instead to call on the other Commissioners to issue a simple interpretation or, at the least, an NOPR on that pure issue of law. A huge pool of investment capital has remained on the sidelines while the Commission has silently watched three courts issue conflicting decisions without the benefit of a definitive FCC interpretation.

Will you be ashamed if the Commission issues yet another non-reviewable order on this issue, which might even be seen as assisting incumbents seeking to forestall entry of innovative competitors?

Andy Schwartzman

[Although this is presented as a personal email message, I will file a copy with the Secretary as an ex parte communication in Docket 98-206.]